

UNITED STATES DISTRICT COURT

FILED
UNITED STATES DISTRICT COURT
LAS CRUCES, NEW MEXICOfor the
District of New Mexico

MAY 04 2023

In the Matter of the Search of
 (Briefly describe the property to be searched
 or identify the person by name and address)
 14580 Dulce Rd SE, Deming, New Mexico
 (Subject Residence)

Case No. 23-942-mr
 MITCHELL R. ELFERS
 CLERK OF COURT

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A, attached and incorporated herein.

located in the _____ District of _____ New Mexico _____, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, attached and incorporated herein.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☒ contraband, fruits of crime, or other items illegally possessed;
☐ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
 16 U.S.C. § 470ee

Offense Description
 unauthorized excavation, removal, damaging, altering and defacing of archaeological resource located on public lands in violation of the Archaeological Resource Protection Act ("ARPA").

The application is based on these facts:

See Attachment C, attached and incorporated herein.

- ☒ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Nicholas Wilson

Applicant's signature

Nicholas Wilson, BLM Special Agent

Printed name and title

Sworn to before me and signed in my presence.
 -by telephone and electronically. JHR

Date: May 4, 2023

City and state: Las Cruces, NM

Jerry H. Ritter

Judge's signature

Jerry H. Ritter, U.S. Magistrate Judge

Printed name and title

ATTACHMENT A

SUBJECT PREMISES

The Subject Premises is located at 14580 Dulce Rd SE, Deming NM, 88030, and is a one-story single-family residence. The residence is tan in color. There are two unattached outbuildings/sheds located on the property that constitute the Subject Premises.



ATTACHMENT B

ITEMS TO BE SEIZED

All evidence relating to violations of 16 U.S.C. § 470ee, Archaeological Resource Protection Act involving William Harley Smyer and other unknown individuals, including:

- a. Tools, to include shovels and rakes seen being used through photo evidence at the archaeological site on February 26, 2023. Specifically, a rake with a yellow and black handle, unknown tool with black handle and red end cap, and a shovel with a metal head.
- b. Vin number, tire imprints, and other identifying information from a green and black All-terrain vehicle (ATV), appearing to be a Yamaha, seen being operated by Smyer through photo evidence at the archaeological site on February 26, 2023, and later observed parked in front of the Subject Premises during surveillance conducted on March 23, 2023.
- c. Clothing seen being worn by Smyer through video evidence on February 26, 2023, at the archaeological site. Specifically described as a black in color ball cap with white patch style logo on front above brim. Grey hooded sweatshirt with red/orange lettering down the left sleeve and dark colored jump suit seen being worn by Smyer at the archeological site while excavating.
- d. Black backpack seen through video evidence attached to front handlebars of the ATV while it was being operated by Smyer at the archaeological site on February 26, 2023.

ATTACHMENT C

**AFFIDAVIT IN SUPPORT OF AN
APPLICATION UNDER RULE 41 FOR A
WARRANT TO SEARCH AND SEIZE**

I, Nicholas Wilson, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

2. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the Subject Premises further described in Attachment A, for the things described in Attachment B.

3. I am a Federal Criminal Investigator with the Department of Interior, Bureau of Land Management and have been so since October of 2022. As such, I am a "federal law enforcement officer" within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request a search warrant. During my career as a Federal Law Enforcement Officer, I have conducted numerous criminal investigations concerning the violation of multiple federal laws and regulations and have received ongoing training in conducting such investigations. My experience as a Criminal Investigator includes, but is not limited to conducting physical surveillance, interviewing witnesses, writing affidavits for and executing search warrants, working with undercover agents and informants, issuance of administrative and federal grand jury subpoenas, analysis of phone toll and financial records, and analysis of data derived from the use of pen registers, and trap and traces, and wiretaps. Based on my experience as a Criminal Investigator, I am familiar with matters including, but not limited to, the means and methods used

by persons and in the violation of the recourse-based crime to include the Archaeological Resource Protection Act.

4. I have been involved in an ongoing investigation regarding the unauthorized excavation, removal, damaging, altering and defacing of archaeological resource located on public lands by William Harley Smyer (Smyer) and other unknown persons. Since the investigation's inception, I, as well as other Federal law enforcement officials from the Bureau of Land Management have obtained information regarding the unauthorized excavation, removal, damaging, altering and defacing of archaeological resource located on public lands by Smyer.

5. I make this affidavit based upon my own personal knowledge, which is substantially derived from my participation in the investigation, as well as that of fellow agents and officers who have participated in the investigation. In addition, I have developed information I believe to be reliable from additional sources including

- a. Information provided by Bureau of Land Management Archeologists.
- b. Surveillance and photographic evidence.
- c. A review of driver's license and automobile registration records.
- d. Records from commercial databases; and
- e. Records from the National Crime Information Center ("NCIC").

6. This affidavit is intended to show only that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

FEDERAL CHARGES RELEVANT TO THIS INVESTIGATION

7. I believe there is probable cause that the unauthorized excavation, removal, damage, alteration, or defacing of archaeological resources on public lands has been violated pursuant to the Archaeological Resource Protection Act ("ARPA") in violation of 16 U.S.C. § 470ee.

8. This Affidavit is submitted in support of an order authorizing the entry of the Subject Premises, as more fully described below and in Attachment A to the search warrant application, for the purpose of seizing and searching the items described in Attachment B to the search warrant application.

9. Through my training and experience, I know the following:

- a. Individuals who conduct unauthorized excavation, removal, damaging, altering and defacing of archaeological resource located on public lands often utilize digging tools such as shovels and rakes. These individuals often conceal these tools and other accessories such as clothing and backpacks used in the commission of the violation.
- b. Individuals involved in ARPA violations often conceal evidence of their illegal conduct within their residences and surrounding areas to which they have readily access such as garages, carports, and outbuildings. They also conceal such evidence in vehicles, including vehicles outside of their residences, so that they have ready access to it and so that they can hide it from law enforcement, including law enforcement officers executing search warrants at their residences.
- c. Individuals involved in ARPA violations often utilize trucks or all-terrain vehicles

that allow for access to archaeological sites which are often located in rural areas not easily accessible by vehicle.

SUBJECT PREMISES

10. This Affidavit seeks issuance of a search warrant allowing agents to enter and conduct a search of a property at 14580 Dulce Rd SE, Deming, New Mexico, more fully described in Attachment A (the Subject Premises).

11. During the investigation, investigators learned that Smyer resides at 14580 Dulce Rd SE, Deming, New Mexico, (Subject Premises). Investigators have conducted physical surveillance of the Subject Premises. During the investigation, investigators have observed Smyer at the Subject Premises.

PROBABLE CAUSE

12. The following information is based upon my personal knowledge as well as information provided by other federal, state or local officers and is presented as probable cause to search the Subject Premises. Because this Affidavit is being submitted for the limited purpose of establishing probable cause, I have not included each and every known fact regarding the instant investigation. More specifically, I have set forth only pertinent facts that I believe are necessary to establish probable cause to search Subject Residence for evidence of violations of 16 U.S.C. § 470ee, Archaeological Resource Protection Act

13. Based upon the information contained in this Affidavit, there is probable cause to believe that Subject Residence belonging to William Harley Smyer contains evidence of violations of 16 U.S.C. § 470ee, Archaeological Resource Protection Act.

14. The investigation initiated on February 09, 2023, when SA Wilson received a report of a damaged archeological site in the area located at Lat 32.45161 Long -107.16209 (“the archaeological site”). This location is within Dona Ana County New Mexico and is on BLM administered land, which is public land. The location of the archaeological site is in an extremely rural area situated between Las Cruces, NM and Deming, NM. It is an unmarked and rather unremarkable location as it sits amongst a sea of creosote brush.

15. The archaeological site is a Classic Mimbres Pueblo that contains surface and subsurface artifacts. Unauthorized excavations have previously occurred at the site on two separate occasions. In 2011, unknown persons used a bulldozer to systematically loot a significant portion of the site. Another unauthorized excavation utilizing a bulldozer occurred in 2013. The individuals responsible for the damage were never identified. Although the site is heavily damaged, it still retains a sizeable number of artifacts. There is no official record for this site. The site is currently being surveyed by a BLM Archeologist.

16. The initial complaint received by SA Wilson came from BLM Archeologist, Garrett Leitemann, Leitemann visited the site on February 09, 2023, to continue his surveying of the archaeological site. Leitemann stated that on his way to the archaeological site he noticed ATV tracks leading to the site. Once at the site, Leitemann discovered several recently dug shovel pits, some sifting around in the older bulldozer piles, and a long trench. Leitemann last visited the site on January 23, 2032, and stated that there were no dig sites in the area at that time.

17. On Friday, February 10, 2023, BLM Special Agent Wilson visited the archaeological site and photographed the damage which included four dig pits and a large trench

measuring approximately twelve feet long. SA Wilson also set up two motion activated cameras in the area.

18. Weeks later, on Tuesday, March 07, 2023, Leitemann conducted a check at the archaeological site and discovered several more dig pits and another trench. Leitemann notified SA Wilson via telephone and SA Wilson responded to the site.

19. Once on scene, Leitemann and SA Wilson recorded the additional trench and six additional dig pits. SA Wilson also checked one of the cameras he had previously set up at the site and discovered several photos from Sunday February 26, 2023. The photos showed two male subjects on and all-terrain vehicle (ATV) arriving at the site at 08:27 a.m. Based on the photos captured, the ATV is believed to possibly be a Yamaha. The photos also showed multiple digging tools attached to the ATV, including a shovel. Additional photos showed the two suspects moving around the site and using tools to dig, rake, and excavate the site.

20. After observing the photos on the first camera (Camera 1), SA Wilson checked the second camera (Camera 2) which had been set on County Road D008 leading to the archaeological site approximately .8 miles away. That camera produced several photos of a Silver Ford F-150 pick-up truck with an ATV in the bed. The ATV matched the ATV captured on camera at the archaeological site being ridden by the suspects on February 26, 2023.

21. SA Wilson was able to use the photos from the on-scene camera to establish close-up photos of the suspects. The photos revealed the clothing and facial identities of both suspects.

Suspects on ATV at the archaeological site on February 26, 2023



22. Days later, on Friday, March 17, 2023, SA Wilson conducted a check of the camera set up on the roadway leading to the archaeological site (Camera 2). That check revealed a vehicle that had driven on the road March 14th, 2023, at 11:41 a.m. The vehicle in the picture bore the license plate of NM 654WKT and appeared to be a blue Ford truck. A check on that vehicle returned to a blue 2008 Ford Ranger registered to Smyer Family Corporation with several addresses in Deming, New Mexico. One of the addresses included the Subject Premises. An address check for the Subject Premises revealed that Smyer resided at the location.

23. On Thursday, March 23, 2023; Field Staff Ranger (FSR) Millhench and SA

Wilson drove to Deming, New Mexico, and conducted surveillance of the Subject Premises located at 14580 Dulce Rd SE, Deming NM. While at the Subject Premises, both FSR Millhench and SA Wilson observed a Silver Ford F-150 pick-up truck. This truck was determined to be the same vehicle photographed on Sunday February 26, 2023, driving to the archaeological site with a green ATV in the bed. The Ford F-150 was parked in the driveway adjacent to the Subject Residence. Also observed adjacent to the residence was a green in color Yamaha ATV, matching the ATV pictured at the archaeological site on February 26, 2023.

24. SA Wilson and FSR Millhench drove around the neighborhood to observe a license plate on the Ford F-150. While driving, SA Wilson observed a male subject exit the Subject Residence and enter the F-150. The F-150 then exited the property and drove up to SA Wilson's vehicle. Once parked next to SA Wilson's vehicle the operator of the F-150 rolled down the driver's side window and asked SA Wilson what he was doing in the area. The operator of the F-150 was immediately identified by SA Wilson and FSR Millhench as the suspect pictured driving the ATV at the archaeological site on February 26. The operator of the F-150 talked with Wilson for a minute then drove back to the Subject Residence. FSR Millhench was able to observe the license plate on the vehicle as NM 033-WRK. Both SA Wilson and FSR Millhench were able to positively identify the male operator of the F-150 as William Harley Smyer through a review of Smyer's driver's license photo and their personal interaction with him.

CONCLUSION

25. I submit that this affidavit supports probable cause for a warrant to search the Subject Premises described in Attachment A and seize the items described in Attachment B.

Respectfully submitted,

Nicholas Wilson

Nicholas Wilson
Special Agent/ Criminal Investigator
Department of Interior, Bureau of Land
Management

[Subscribed and sworn to before me] or [Electronically signed and telephonically sworn]
on May 4, 2023:

91562407

UNITED STATES MAGISTRATE JUDGE